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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Tri Tool, Inc.--Modification of Remedy

**File:** B-265649.3

**Date:** October 9, 1996

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Paul C. Bingaman for the protester.

Granette Trent, Esq., Department of Justice, for the agency.

Robert Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Recommendation contained in decision sustaining protest that agency terminate awardee's contract and recompete under revised specifications is modified to award bid preparation costs where original recommendation was based on erroneous information indicating that contract performance had been stayed during the pendency of the protest, and contract had actually been fully performed by the date of our decision.

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## DECISION

Tri Tool, Inc. requests modification of the remedy contained in our decision sustaining its protest against the rejection of its bid under solicitation No. 1PI-B-1498-95, issued by the Department of Justice, Federal Prison Industries, Inc. (FPI), for pipe cutting components. Tri Tool, Inc., B-265649.2, Jan. 22, 1996, 96-1 CPD ¶ 14.

We sustained the protest because we found that FPI had improperly rejected Tri Tool's bid. During the pendency of the protest, we were informed by the agency that while a stay was not statutorily required, performance was being stayed pending our resolution of the protest. Based on this information, we recommended that the agency terminate the awardee's contract and recompete the requirements under revised specifications, and found Tri Tool entitled to its reasonable costs of filing and pursuing the protest.

Following the issuance of that decision, the agency advised our Office that the earlier information regarding contract performance was in error. In fact, as of the date of our decision, contract performance was complete. In light of these circumstances, Tri Tool requests that the remedy be modified to include the award of bid preparation costs.

Because termination of the awardee's contract and recompetition are not feasible, Tri Tool is entitled to reimbursement of its bid preparation costs as well as its protests costs. See Bush Painting, Inc.--Modification of Remedy, B-239904.2, Jan. 11, 1991, 91-1 CPD ¶ 28.

The prior decision is modified accordingly.

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